



FRUIT AND VEGETABLE DIVISION

PACA FACT FINDER

What is the Perishable Agricultural Commodities Act?

Commodities Act (PACA) of 1930 promotes fair trading in the fruit and vegetable industry. It requires buyers and sellers of fresh and frozen fruits and vegetables to live up to the terms of their contracts and provides informal and formal procedures to resolve disputes outside the civil court system.

Why do fruit and vegetable traders need more protection than other industries?

The fruit and vegetable industry is unique. Dealers handle a product that is very perishable. A 1- or 2-day delay in marketing can mean the difference between profit and loss. By spelling out the responsibilities of all parties, the PACA enables the product to be marketed promptly while still protecting buyers' and sellers' rights in the event that a contract dispute occurs.

How is the PACA enforced?

Federal law requires that almost everyone who deals in fresh and frozen fruits and vegetables hold a PACA license. The license is the key to enforcement. A party found to have committed unfair trade practices faces license suspension or revocation, which severely restricts its operations in the fruit and vegetable industry.

How is the law financed?

PACA license and complaint filing fees finance the administration of the program. Congress provides no appropriations.

Is anyone exempt from licensing requirements?

Yes, growers are exempt as long as they sell only products that are of their own production. Also, retailers and frozen food brokers representing sellers are exempt until they purchase or negotiate sales of \$230,000 or more worth of fruits and vegetables in a calendar year. Truckers who are

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restaurants, are not required to be licensed. Anyone with license questions or needing assistance in applying for a license may call PACA's toll-free number, 1-800-495-PACA (7222).

What responsibilities does the PACA place on a licensee?

The PACA requires traders to comply with the terms of their contracts. Sellers must ship the quantity and quality of produce specified. Buyers must accept shipments that meet contract specifications and pay promptly after acceptance. Prompt payment means payment within 10 days, unless the buyer and seller agree in writing prior to the sale to extend the time for payment. For consigned shipments, receivers must issue true and correct accountings and pay net proceeds promptly.

What are unfair trade practices?

- Rejecting without reasonable cause produce bought or contracted to be handled on consignment;
- Failure to pay promptly the agreed price of produce that complies with contract terms;
- Discarding, dumping, or destroying without reasonable cause any produce received to be sold on behalf of another firm;
- Failure or refusal to account truly and correctly or to make full payment promptly for produce shipped on consignment or on joint account; and
- Misbranding or misrepresentation of grade, quality, quantity, weight, state, or country of origin of fruits and vegetables.

If there is a problem with a buyer paying, what can be done?

The PACA provides a forum to resolve contract disputes. Traders can file reparation complaints against licensees if they suffer damages resulting from a violation. The complaint must be filed within 9 months of the date payment was due.

contract carriers only, and most

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mediating an amicable settlement between the parties. If the complaint cannot be settled informally, a formal complaint can be filed. The complaint is handled under an administrative procedure, and the Secretary of Agriculture can issue an award plus interest based on the evidence in the case. If the award is not paid timely or is appealed, the firm's license is automatically suspended until the award is paid.

If a firm goes out of business or files for bankruptcy, is there any chance of recovering money owed?

Yes. In 1984, an amendment, called the PACA trust provisions, went into effect. It created a statutory trust consisting of a buyer's produce-related assets which are to be held for the benefit of unpaid produce suppliers that have preserved their trust rights.

How does the PACA trust work?

In the case of a business failure, trust assets, which belong to trust beneficiaries, are not available for general distribution to other creditors until the timely trust claims have been fully satisfied. The law applies to all fruit and vegetable sales to licensees, and a buyer's insolvency or bankruptcy does not affect its application.

What are PACA trust assets?

Generally, PACA trust assets are a firm's fruit- and vegetable-related assets, including fruit and vegetable inventory, products derived from fruits and vegetables, and all receivables or proceeds from the sale of these fruits and vegetables.

When does the trust go into effect?

The trust goes into effect as soon as the buyer takes possession, ownership, or control of the goods. For example, in an f.o.b. sale, the title passes to the buyer when the goods are tendered at the shipping point; that is when the trust protection begins.

Most complaints are settled informally, with Agricultural Marketing Service's PACA Branch

What must sellers do to preserve their trust rights?

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What are the notification requirements?

requirements.

There is no set form. However, the trust notice given to the debtor must be in writing and state that it is "The intent to preserve trust benefits under the PACA." The notice must contain sufficient detail to allow the debtor to identify the transaction subject to the trust and must be given to the debtor within 30 days from the date that payment was past due or receipt of notification that payment was dishonored.

PACA licensees have been provided with an alternative method to preserve their trust rights. This alternative method allows licensees to include on their invoices or other billing document the following statement: **"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."**

How long are a seller's rights preserved?

Trust claimants who preserve their trust rights by providing proper notice remain beneficiaries until paid.

How is payment from trust assets enforced?

The trust is a self-help tool. Beneficiaries may file in the U.S. District Court to enforce payment from the trust immediately following a buyer's failure to pay promptly. In cases where the debtor is bankrupt, trust beneficiaries should file their claims for payment with the bankruptcy court.

Although the trust automatically goes into effect at the time the buyer receives the goods, sellers must properly preserve their rights by meeting the notification

Can you make other terms for payment under the trust?

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What is a disciplinary action under the PACA?

protection. The agreement must be in writing, entered into prior to the transaction, and the terms must be reflected on the invoice and all other billing documents.

The U.S. Department of Agriculture (USDA) may penalize a licensee who repeatedly and flagrantly violates the act. A disciplinary action may result in a suspension or revocation of the firm's PACA license. In lieu of suspension or revocation, the Secretary of Agriculture may assess a civil penalty of up to \$2,000 for each violation or for each day the violation continues.

How does the USDA decide if a PACA license should be suspended or revoked?

In addition, those who operate without a valid PACA license are subject to fines of up to \$1,000 for each offense and \$250 each day the offense continues. Court injunctions can be issued against those who persist in operating without a license.

USDA considers the seriousness and the nature of the violation(s) along with the number of violations by the firm and the number of times that the firm has been warned about such violations. Revocation of the license is the severest penalty that can be imposed.

How does a PACA license suspension or revocation restrict a firm and its principals?

Following the suspension or revocation of a firm's PACA license, the firm and its responsibly connected individuals are automatically subject to licensing and employment restrictions. A person is considered to be responsibly connected if he/she is a partner in a partnership or an officer, director, or holder of more than 10 percent of the stock of a

If payment is to be made at a time other than that specified in PACA prompt payment regulations (usually 10 days from the date of acceptance), the agreed payment terms cannot exceed 30 days from the date of acceptance to qualify for trust

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with it can engage in business under any other PACA license or be affiliated in any way with another licensee unless a bond is posted by the employing firm and USDA approval is obtained. The terms "employ" and "employment" mean any affiliation with the business operations of a licensee, with or without compensation, including ownership or self-employment.

In the case of repeated and flagrant violations of the PACA, a license may be revoked and the firm and its responsibly connected persons must stop dealing subject to the PACA for 1 year. After 1 year, the principals may be employed with a licensee, if bonded. After 2 years, the firm may apply for a new license, provided that a bond is posted.

An additional year may be added to the employment restriction period if it is determined that a responsibly connected individual was unlawfully employed.

What are some of the common violations calling for disciplinary action?

The most common violations calling for disciplinary action are:

- Failure to pay for shipments of produce purchased;
- Slow payment;
- Failure of a commission merchant or grower's agent to render accurate accountings and pay promptly the net proceeds due the shippers and growers;

corporation or association.

During a license suspension, the firm cannot conduct business in the produce industry. Furthermore, none of the persons responsibly connected

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Are all licensees under the PACA required to be bonded?

- Refusal to produce records for examination in connection with complaints filed; and

- Employing a restricted person after receiving notice from the USDA that such employment is prohibited.

No. Bonds are required only under certain conditions specified in the program. Bonds are required under the following circumstances:

- Firms that employ persons responsibly connected to licensees who failed to pay a reparation order issued against them within the past 2 years are required to furnish a bond;

- A person whose license has been revoked for repeated or flagrant violations cannot be employed by, or affiliated in any way with, any other licensee for a period of 1 year following the revocation. After that time, another licensee may employ the person if the employer furnishes a bond in an amount set by USDA;

- After a 2-year period, a person or firm which had its license suspended or revoked may only obtain a license by furnishing a bond. After 3 years, a license may be obtained without a bond.

- When a person or firm applies for a license within 3 years following a bankruptcy adjudication or discharge, a satisfactory surety bond must be posted.

- Failure of brokers authorized by shippers to invoice and collect for produce sold, to remit the collected proceeds to the shippers;

- Flagrant misbranding or misrepresentation of produce shipped in interstate commerce;

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This law puts strict Government regulation on the produce industry. Do you receive much resistance from industry?

The industry developed and sponsored this law, and the majority of industry members continue to support the PACA. The act has been amended several times over the years to keep pace with changing trade practices. The most recent revisions occurred in 1995. Each time, the law has been strengthened.

Additional inquiries regarding the compliance of the PACA by all segments of the produce industry, including small entities, may be directed to the national headquarters in Washington, D.C., or any of the following five regional PACA offices:

*PACA Branch
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
P.O. Box 96456, Room 2095-So.
Washington, DC 20090-6456
Telephone: (202) 720-2890
Fax: (202) 720-8868*

*PACA Southwest Region
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
1200 East Copeland Road, Suite 404
Arlington, TX 76011-4938
Telephone: (817) 276-2530
FAX: (817) 276-1968*

*PACA Branch, Western Region
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
Tucson Federal Building, Room 7X
300 West Congress St., Box FB30
Tucson, AZ 85701-1319
Telephone: (520) 670-4793
Fax: (520) 670-4798*

*PACA Branch, Northeast Region
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
622 Georges Road, Suite 303
North Brunswick, NJ 08902-3313
Telephone: (908) 846-4798
FAX: (908) 846-0427*

*PACA Branch, Midwest Region
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
Building A, Suite 360
800 Roosevelt Road
Glen Ellyn, IL 60137-5832
Telephone: (630) 790-6929
Fax: (630) 858-9304*

*PACA Branch, Southeast Region
Fruit and Vegetable Division
AMS, U.S. Department of Agriculture
8700 Centreville Road, Suite 206
Manassas, VA 22110-8411
Telephone: (703) 330-4455
FAX: (703) 330-4856*

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To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 202/ 720-7327 (voice) or 202/ 720-1127 (TDD). USDA is an equal employment opportunity employer.

*September 1992
Slightly revised September 1996*